

JAN 08 2014

STATE BOARD OFFICE

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS AND  
FUNERAL DIRECTORS AND THOMAS NELSON, INDIVIDUALLY AND  
D/B/A RELIABLE FUNERAL HOME**

(Funeral Director and Establishment Licenses)

154 JAN -8 14

The State Board of Embalmers and Funeral Directors (the "Board") and Nelson Thomas, individually and d/b/a Reliable Funeral Home ("Licensee" or "Nelson" or "Reliable Funeral," in reference to the establishment) enter into this "Settlement Agreement Between State Board of Embalmers and Funeral Directors and Thomas Nelson, individually and d/b/a Reliable Funeral Home" (the "Settlement Agreement") to resolve the question of whether Nelson's funeral director and establishment licenses should be subject to discipline and, if so, to agree on the appropriate level of discipline to impose on these licenses.

Pursuant to the terms of Section 536.060 RSMo<sup>1</sup>, the parties hereto waive the right to a hearing by the Administrative Hearing Commission and the right to a disciplinary hearing before the Board per Section 621.110, RSMo, and stipulate and agree to final disposition of this matter by this Settlement Agreement.

Licensee acknowledges that he understands the various rights and privileges afforded to him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to potentially recover attorney's fees incurred in defending this action against his

<sup>1</sup> All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated. Provisions to portions of Chapter 436, RSMo, that were repealed in 2009 are designated also as "Old Law."

licenses. Being aware of these rights provided to them by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to him.

Licensee acknowledges that he has received a copy of the investigative report and other documents relied upon by the Board in determining there is cause for discipline, along with citations to law and/or regulations the Board believes were violated and that he has been advised of his right to consult with private legal counsel, at his expense, to assist him with this matter. For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's licenses are subject to disciplinary action by the Board in accordance with the provisions of Chapters 324, 333 and 621, RSMo.

#### **Relevant Statutes and Regulations**

1. Section 333.021.1, RSMo, requires a license to engage in the practice of embalming and states:

No person shall engage in the practice of embalming in this state unless he has a license as required by this chapter.

2. Each funeral establishment is required to be under the management and supervision of a funeral director in charge as required by Section 333.061, RSMo, that states, in relevant portion:

A license for the operation of a funeral establishment shall be issued by the board, if the board finds:

(1) That the establishment is under the general management and the supervision of a duly licensed funeral director;

3. Regulation 20 CSR 2120-1.040(14) defines a “funeral director –in- charge as :

(14) Funeral director-in-charge—an individual licensed as a funeral director by the State Board of Embalmers and Funeral Directors responsible for the general management and supervision of a Missouri licensed funeral establishment in the state of Missouri. Each Missouri licensed funeral establishment shall have a Missouri licensed funeral director designated as the funeral director-in-charge.

4. Regulation 20 CSR 2120-2.070 clarifies the requirement for each funeral establishment to register its funeral director-in-charge with the Board and states:

(7) A funeral establishment application shall indicate the name and license number of the Missouri licensed funeral director-in-charge, as defined by 20 CSR 2120-1.040. When the Missouri licensed funeral director-in-charge changes for a period of more than thirty (30) days, the new Missouri licensed funeral director-in-charge and the former Missouri licensed funeral director-in-charge, jointly or individually, shall notify the board of the change within thirty (30) days of the date when the change first occurs. Failure to notify the board shall be considered a violation of this rule on the part of each Missouri funeral director licensee and on the part of the Missouri licensed funeral establishment. A change in the Missouri licensed funeral director-in-charge does not require a new Missouri licensed funeral establishment license.

5. Section 333.330.2, RSMo, authorizes discipline on establishment and funeral director licenses and states, in relevant part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

(4) Obtaining or attempting to obtain any fee, charge, tuition, or other compensation by fraud, deception, or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant thereto;

\* \* \*

(14) Violation of any professional trust or confidence;

**Joint Stipulation of Facts and Conclusions of Law**

The parties agree and stipulate to the following findings of fact and conclusions of law:

**Parties and Licenses**

6. The Board is an agency of the State of Missouri created and established pursuant to Section 333.151, RSMo, and vested with the authority to execute and enforce the provisions of Chapter 333 and portions of Chapter 436, RSMo.

7. Nelson Thomas is an individual who operates as Reliable Funeral Home and has registered his business address with the Board as 3958 Washington, St. Louis, Missouri 63108.

8. Reliable Funeral holds establishment license number 002705. This license was current and active at all times relevant to this Settlement Agreement.

9. Nelson Thomas also holds funeral director license number 001398 and has registered his address with the Board as 3964 Washington, St. Louis, Missouri 63108. This license was current and active at all times relevant to this Settlement Agreement.

10. Nelson Thomas registered himself as the funeral director-in-charge of Reliable Funeral and is responsible for the supervision and management of the funeral establishment.

### Conduct Giving Cause for Discipline

#### *Unlicensed Embalming*

11. At all times relevant to this Settlement Agreement, Reliable Funeral retained Charles A. Woodcox, a Missouri licensed embalmer, to perform embalming at Reliable Funeral.

12. In February, 2012, Charles Woodcox was recuperating from a serious illness and asked Calvin Davis to handle his calls for embalming, including calls from Reliable Funeral.

13. From March 18, 2013 through March 21, 2013, Calvin Davis embalmed 2 bodies at Reliable Funeral.

14. Calvin Davis embalmed a total of approximately 12 bodies at Reliable Funeral.

15. Calvin Davis completed the information in the embalming log and Charles Woodcox signed the log and completed the death certificate.

16. Calvin Davis has never been licensed as an embalmer in Missouri.

17. Reliable Funeral knew Calvin Davis embalmed bodies at Reliable Funeral during the time that Charles Woodcox was ill.

18. Reliable Funeral knew, or should have known, that Calvin Davis held no license as an embalmer.

#### Cause to Discipline

19. Licensee allowed an unlicensed person to embalm bodies at his funeral home.

20. Licensee held out to the public that he had the proper resources to lawfully care for a dead human body including embalming.

21. Licensee received payment from consumers for embalming performed at his funeral home by an unlicensed person.

22. By allowing an unlicensed person to embalm dead human bodies at his funeral home, Licensee breached his and duties as a licensee.

23. Nelson, as funeral director in charge, and as the sole proprietor of Reliable Funeral was responsible for ensuring that all conduct in the funeral establishment complied with Missouri law and he failed to meet this duty.

24. The Board has cause to discipline Licensee's establishment license and funeral director license pursuant to Section 333.330.2, (4), (5), (6), and (14) RSMo.

#### **Jointly Stipulated Disciplinary Order**

The parties agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Sections 333.330 and 621.045.3, RSMo:

25. Licensee's licenses to practice as a funeral establishment and as a funeral director are hereby **SUSPENDED for TWO (2) WEEKS<sup>2</sup>** from the effective date of this Settlement Agreement and, upon completion of the suspension, immediately placed on **PROBATION** for a period of **FIVE (5) YEARS** (collectively, the "Disciplinary Period"). During the suspension portion of the Disciplinary Period, Licensee shall not operate as a funeral establishment or practice as a funeral director. During the probation period of the Disciplinary Period, Licensee shall be entitled to practice as a funeral establishment and a funeral director. The discipline imposed is subject to the following terms and conditions:

#### **Terms and Conditions**

26. Licensee shall comply with the following terms and conditions during the Disciplinary Period:

---

<sup>2</sup> Defined to be 14 consecutive days.

- a. Licensee shall keep the Board informed of Licensee's current telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee utilizes e-mail, Licensee shall provide the Board with the current and active e-mail address of its funeral director in charge;
- b. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts;
- c. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;
- d. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;
- e. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;
- f. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active;

- g. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of probation;
- h. Licensee shall submit written compliance reports to the Board no later than January 1 and July 1 of each year, but no compliance report shall be filed more than 14 days before it is due. Each of these compliance reports shall state truthfully whether there has been full compliance with the terms and conditions of this Order for the previous six month period and shall fully explain any non-compliance. These compliance reports shall contain all other information required by this Settlement Agreement and shall be filed on forms supplied by the Board, if Licensee fails to receive the form from the Board, Licensee shall have the duty to contact the Board to request the form;
- i. Licensee shall provide any death care employer with a copy of this Settlement Agreement within 5 working days from the date of receipt of the final executed Settlement Agreement and within 5 working days from the date of any new employment; and
- j. Licensee shall not serve as the supervisor of any funeral director apprentice or embalmer practicum student or embalmer apprentice without the express written consent of the Board. If Licensee seeks to supervise an apprentice, Licensee shall submit a written request to the Board that includes the name and address of the potential apprentice and a description of Licensee's ability to properly supervise an apprentice. No such apprenticeship shall commence until the Board has given its consent for Licensee to supervise the apprentice;



27. The terms of this Settlement Agreement are contractual, legally enforceable and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge or termination is sought.

28. Upon the expiration of the Disciplinary Period and successful completion of the probation, Licensee's license(s) shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Licensee has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may impose additional probation, suspend, revoke, or otherwise lawfully discipline Licensee's license(s).

29. The Board shall enter no order imposing further discipline on Licensee's license(s) without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

30. If the Board determines that Licensee has violated a term or condition of this Settlement Agreement, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Order in its determination of appropriate legal actions concerning such violation(s).

31. If any alleged violation of this Settlement Agreement occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of probation occurred and, if so, may impose

further discipline on the license(s) of Licensee. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of probation occurred.

32. Licensee, together with his heirs and assigns and his attorney(s), do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents or attorneys, including any former Board members, employees, agents and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087 RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement or from the negotiation or execution of its settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

33. Each party agrees to pay all their own expenses and fees incurred as a result of this matter or any ensuing litigation.

34. Licensee understands that he may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license(s). If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, Licensee may submit his request to: Administrative Hearing Commission, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102.

35. If Licensee requests review, this Settlement Agreement shall become effective on

the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the Administrative Hearing Commission, the Settlement Agreement goes in to effect 15 days after the document is signed by the Executive Director of the Board.

36. This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

Licensee

Nelson Thomas  
Nelson Thomas

Board

Sandy Sebastian  
Sandy Sebastian  
Executive Director  
State Board of Embalmers and Funeral Directors

Dated: Dec. 23, 2013

Dated: 1-8-14

Approved:

Sharon K. Euler  
Sharon K. Euler # 42950  
Division of Professional Registration  
615 East 13<sup>th</sup> Street, Suite 501  
Kansas City, Missouri 64106  
(816) 889-3687 (voice)  
(816) 889-2345 (fax)  
[Sharon.euler@pr.mo.gov](mailto:Sharon.euler@pr.mo.gov)

COUNSEL FOR LICENSEE

COUNSEL FOR THE BOARD